

REMARKS

Applicants respectfully request reconsideration of the claims in light of the above amendments and the remarks below.

Claims 1-20 and 23-29 have been canceled to expedite prosecution of the application. Applicants reserve the right to file one or more continuing applications for the canceled claims.

Claim 21 has been amended to recite the invention with greater clarity. In particular, claim 21 has been amended to call for the limitation that ethylene vinyl alcohol copolymer and fumed silica are present in the composition in a weight ratio from about 1.33:1 to about 1.0:1. Support for the amendments can be found for example in the Specification in Paragraphs 000117 and 000118 on page 25.

Claims 41-44 have been added to recite the embodiments fully supported by the Specification originally filed. In particular, claim 41 is added to recite a weight ratio of ethylene vinyl alcohol copolymer to fumed silica about 1:09:1, as supported by Formula L on page 25; claim 42 is added to recite a weight ratio of about 1.18:1 as supported by Formula J; claim 43 is added to recite a weight ratio of about 1.25:1 as supported by Formula I; and claim 44 is added to recite a weight ratio of about 1:33:1 as supported by Formula K.

The dependency of claim 30 has been amended as a result of cancellation of claim 1.

The above amendments and additions of claims are supported by the Specification originally filed and therefore no new matter has been introduced by such amendments and additions.

Claims 1, 3-16, 18-23, 30-36, and 38-40 stand rejected under 35 U.S.C. §102(e) as being allegedly anticipated by Porter *et al.* (US 2004/0156781). The Examiner indicates that the compositions recited in the instant claims are the same as those of Porter *et al.* and therefore the properties of the claimed compositions are inherently met by Porter *et al.* Applicants traverse.

Claims 1, 3-16, and 18-20 have been canceled without prejudice.

Claim 21, as amended, now calls for the limitation that ethylene vinyl alcohol copolymer and fumed silica are present in the composition in a weight ratio from about 1.33:1 to about 1.0:1. Porter *et al.* do not teach or suggest the weight ratio of ethylene vinyl alcohol copolymer to fumed silica in the composition as now called for by instant claim 21. While Porter *et al.* teach a composition comprising 3 to 12 weight percent of a biocompatible polymer, or 1 to 12 percent of a rheological modifier, Porter *et al.* do not specify the weight ratio of ethylene vinyl alcohol copolymer to fumed silica from about 1.33:1 to about 1.0:1. While Porter *et al.* provide an example in Paragraphs [0120] to [0126] describing a composition having 15 g ethylene vinyl alcohol copolymer and 16.5 g fumed silica, the weight ratio of the composition (0.9:1) falls outside the 1.33: to 1.0:1 range as called for by instant claim 21. Further, Porter *et al.* do not teach or suggest the weight ratio as called for by newly added claims 41-44, which are supported by Formulas I, J, K, and L disclosed in the Specification on page 25. Indeed, Porter *et al.* do not teach or suggest a composition that provides a shear thinning index of 4.0 to 6.5.

Based on the forgoing reasons, Applicants submit that claim 21 is allowable under 35 U.S.C. 102 over Porter *et al.* Claims 22, 30-40, and 41-44 depend on claim 21 and recite additional limitations. Claims 22, 30-40, and 41-44 are therefore allowable for at least the same reasons as for claim 21.

Claims 1, 3-22 and 30-40 stand rejected under 35 U.S.C. §103(a) as being allegedly unpatentable over Greff *et al.* (WO 00/71170) in view of Porter (US 2003/0039696). Applicants traverse.

Neither Porter nor Greff *et al.* teach or suggest a composition comprising ethylene vinyl alcohol copolymer and fumed silica in a weight ratio from about 1.33:1 to about 1.0:1, now called for by instant claim 21. Therefore, even if one of ordinary skill arguably attempts to combine Greff *et al.* with Porter, the combination cannot arrive at the invention recited by instant claim 21.

Applicants provide a novel composition that is particularly useful, for example in the treatment of aneurysm. The composition comprises ethylene vinyl alcohol copolymer and fumed silica in a weight ratio such that the composition provides a share thinning index of about 4.0 to 6.5. A high share thinning index is advantageous since it allows for ease and control of the injection and for site-specific embolus placement. Neither Porter nor Greff *et al.* teach or suggest a composition that provides a share thinning index of about 4.0 to 6.5.

Based on this reason, Applicants submit that instant claim 21 is allowable under 35 U.S.C. 103(a) over Greff *et al.* in view of Porter. Claims 22 and 30-44 depend on claim 21 and recite additional limitations. They are therefore allowable for at least the same reasons as for claim 21.

Applicants will address the double patenting rejection when the Examiner indicates that the instant claims are in condition for allowance.


Applicants submit that the present application is now in condition for allowance and a notice of allowance is respectfully requested. The Examiner is invited to contact the undersigned by telephone if it is felt that a telephone interview would advance the prosecution of the present application.

The Commissioner is hereby authorized to charge any additional fees which may be required regarding this application under 37 C.F.R. §§ 1.16-1.17, or credit any overpayment, to Deposit Account No. 19-0741. Should no proper payment be enclosed herewith, as by a check or credit card payment form being in the wrong amount, unsigned, post-dated, otherwise improper or informal or even entirely missing, the Commissioner is authorized to charge the unpaid amount to Deposit Account No. 19-0741. If any extensions of time are needed for timely acceptance of papers submitted herewith, Applicant hereby petitions for such extension under 37 C.F.R. §1.136 and authorizes payment of any such extensions fees to Deposit Account No. 19-0741.

Please direct all correspondence to the undersigned attorney or agent at the address indicated below.

Respectfully submitted,

Date 01/18/2008

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